IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2024 OF 2006

M/s.Shagun Processors Pvt.Ltd. Petitioner
vs.
Union of India & ors. Respondents

Mr.Ashok Singh i/b.M/s.ACE Legal Consultants for the petitioner.

Ms.S.V.Bharucha with Mr.A.S.Rao for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 24th March, 2006

P.C.

We heard Mr.Ashok Singh, the learned counsel for the petitioner and Ms.S.V.Bharucha, the learned counsel for the respondents.

2. Rule. Returnable forthwith. The advocate for the respondents waives service.

3. By consent, rule is heard finally at this stage.

4. The petitioners have challenged the order dated 14th December, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zone Bench at Mumbai (for short, 'the Tribunal') whereby the application made by the petitioners for condonation of delay in filing the

appeal was rejected and, consequently, the appeal was dismissed.

5. The petitioners suffered an adverse order by way of order in original dated 29th October, 2004. Aggrieved by that order, the petitioners filed appeal before the Commissioner (Appeals). The said appeal was disposed of on 31st March, 2005. The petitioners challenged the order dated 31st March, 2005 by filing further appeal before the Tribunal. The said appeal suffered from delay of 40 days and, therefore, the petitioners (appellants therein) made an application for condonation of delay. The Tribunal held that the delay was not sufficiently explained and, consequently, dismissed the application for condonation of delay and the appeal as well.

6. We perused the application for condonation of delay in filing the appeal. In the said application, it was stated that the order dated 31st March, 2005 was despatched on 13th April, 2005 which was received by the applicant on 15th April, 2005 at their address at Surat. However, in the meanwhile the directors of the company shifted to Rohtak being their native place. It was in the first week of August that one of the directors was informed of the order. Immediately thereafter the arrangements were made for collection of the documents

and the appeal was filed.

7. It is true that the petitioners are a private limited company and, therefore, run by a body of individuals. The fact of the matter is that the body of individuals that run the company belongs to one family. The directors of the company are natives of Rohtak and there is nothing to disbelieve their statement made in the application that during the pendency of the adjudication proceedings, they shifted to Rohtak. The impugned order was served at Surat in the month of April, 2005, but it seems that as the directors of the company had shifted to Rohtak, no steps were taken in challenging the said order immediately. It is not seen that the petitioners' act of filing the appeal belatedly was deliberate. If the petitioners or for that matter, their directors had known of the order dated 31st March, 2005 earlier, we find no reason why the appeal would not have been filed earlier. The petitioners or for that matter their directors have not gained anything by lodging the appeal belatedly.

8. In our view, the approach of the Tribunal in considering the application for condonation of delay was not in accordance with the settled principles. It needs no emphasis that application such as this ought to have been considered with justice oriented approach.

9. The result is that we would allow the appeal and set aside the impugned order and we do so. The application for condonation of delay in filing the appeal stands condoned. The appeal No.E/2884/05 and the Stay Application No.2473/05 are restored to the file of the Tribunal for consideration in accordance with law.

. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)